

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

VICKY LYNN LESTER,)
Petitioner,)
v.) NO. 1:06-CV-16/
UNITED STATES OF AMERICA,) 1:02-CR-151
Respondent.) *Judge Collier*

MEMORANDUM

This *pro se* motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is before the Court upon Petitioner Vicky Lynn Lester's ("Petitioner") response to an order directing her to show cause as to why her motion should not be dismissed as untimely (Ct. File No. 6).

In her response, Petitioner argues her motion should not be dismissed for failure to appeal her sentence because she was given legal instructions not to appeal. As the order indicated, the basis of the contemplated dismissal of this case is Petitioner's failure to file her motion in this Court within the one-year statute of limitations in 28 U.S.C. § 2255, not her failure to file a direct appeal in the United States Court of Appeals for the Sixth Circuit ("Sixth Circuit"). Petitioner's explanation as to why she did not appeal her criminal conviction and sentence is completely irrelevant to the question of why her § 2255 motion was untimely.

Therefore, the Court concludes Petitioner has failed to show cause and will **DISMISS** this motion as time-barred.

Finally, Petitioner may not appeal a final order in this § 2255 case to the Sixth Circuit unless "a circuit justice or judge issues a certificate of appealability." 28 U.S.C. § 2253(c)(1). The Court must now consider whether to issue a certificate of appealability ("COA") should Petitioner file a

notice of appeal. Issuance of a COA depends upon whether Petitioner has made a substantial showing of the denial of a constitutional right. *See* 28 U.S.C. § 2253(c)(2). A petitioner whose claims have been rejected on a non-merits basis satisfies the requirements of § 2253(c) by showing jurists of reason would disagree about the correctness of a court's procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court does not believe reasonable jurists would find the resolution of the timeliness issue debatable or wrong. Because Petitioner has failed to make a substantial showing of the denial of a constitutional right, a COA will not issue.

A separate order will enter.

SO ORDERED.

ENTER:

/s/
CURTIS L. COLLIER
CHIEF UNITED STATES DISTRICT JUDGE